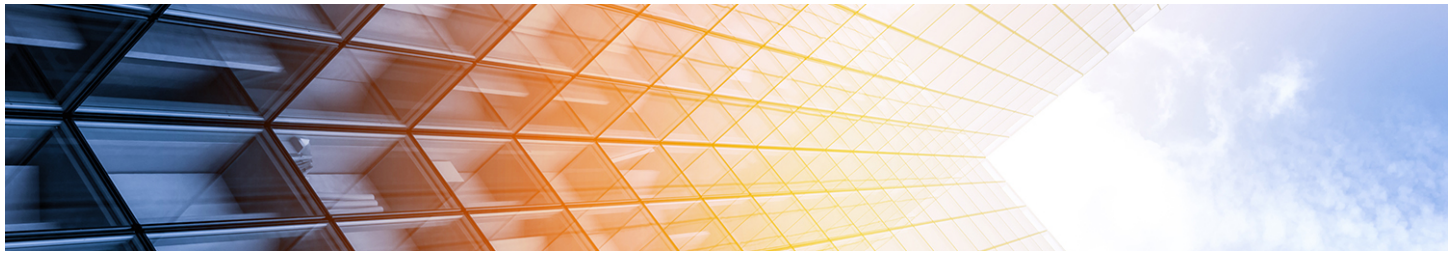
Linklaters

CRD 6 and European licensing considerations for direct lending funds

November 2025



The EU is introducing major regulatory changes which will impact on the way in which debt funds can originate loans to European borrowers.

This growing area of business is already a very complex one, with different structures needed to meet local law requirements across Europe.

Introduction

Amendments to the EU's Capital Requirements Directive (known as "**CRD 6**") will introduce additional licensing restrictions on the ability of non-EU entities to lend to EU borrowers from 11 January 2027.

Helpfully for funds the restrictions introduced by the new Article 21c CRD 6, which intend to increase the barriers to cross border access into "fortress EU", are primarily targeted at cross-border business conducted by non-EU banks and significant non-EU investment firms with EU clients, and not at lending from non-EU funds.

However the definitions used to set the scope of entities that are captured by Article 21c are complex. There is also the potential for different implementations of the new restrictions to be introduced across EU member states because implementing legislation will be adopted at national level (due by January 2026).

As a result, managers of non-EU direct lending funds will need to carefully assess whether changes to licensing regimes in response to the implementation of CRD 6 could impact on their ability to lend to EU borrowers going forward.

In this note we:

> set out an overview of the licensing considerations for non-EU funds lending to European borrowers today (see page 2); and

> describe the scope and potential impact of CRD 6 (see page 3).

In addition to CRD 6, European direct lending funds also face upcoming regulatory changes under the amended Alternative Investment Fund Managers Directive ("AIFMD 2"), which are designed to usher in a more harmonised EU-wide approach to Alternative Investment Funds ("AIFs") that originate loans. We also provide a brief overview and links to our relevant materials (see page 4).

How can Linklaters help?

Our financial regulation and investment funds teams across the UK and EU have significant experience in advising direct lending funds on the licensing analysis for lending across Europe, in the design and implementation of direct lending structures, and advising on the implementation of AIFMD 2 and CRD 6.

If you would like to discuss, please get in touch.

Current licensing considerations for cross-border lending

Understanding how CRD 6 interacts with the existing licensing position in the EU for direct lending funds is essential.

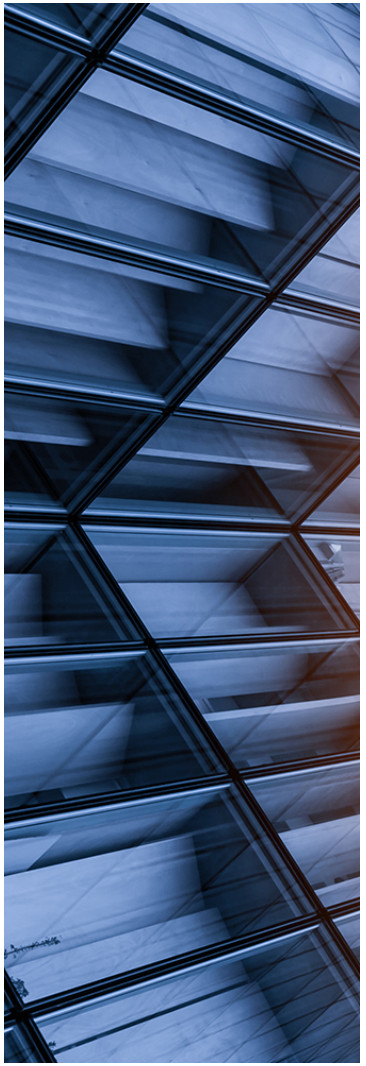
Currently, the regulatory regime governing lending to EU borrowers is disjointed, with local licensing requirements differing across European jurisdictions (and in the UK). Lending to individual or consumers will generally trigger licensing requirements for the lender across the UK and EU. The picture for lending to corporates, however, is more complex.

- **Depending on where the borrower is, non-EU funds lending to corporates can be unregulated**: In some jurisdictions, corporate lending is currently unregulated, making the position for direct lending funds straightforward. The UK, for example, only regulates lending that falls within the scope of its consumer credit and regulated mortgage regimes, with lending to typical limited company borrowers not captured (though lending vehicles based in the UK may be required to register with the FCA for AML supervision purposes).

- **However that is not the case everywhere**: Several key European jurisdictions, including France, Germany and Italy (among others), do include corporate lending within their regulatory licensing perimeter. It is therefore important for private credit managers to understand whether their funds can trigger local licensing requirements when lending to corporate EU borrowers, with the answer varying depending on the member state in question.

- **What are the options when corporate lending is regulated?** In jurisdictions where lending is regulated, there are often solutions available. Several EU members state, for example, already permit lending from EU AIFs to corporate borrowers in their jurisdictions under their licensing regimes. However this can come with conditions attached (such as requirements to register with local regulators), scope can vary (e.g., whether lending from fund-owned SPVs also benefits from licensing exemptions) and whether this is possible varies by jurisdiction. Other approaches may include restructuring loans as bond issuances, use of a fronting bank and, though critically important to ensure that it can be evidenced and is supported by the facts, arguments that lending has taken place on a 'reverse solicitation' basis.

As can be seen from the above, the existing picture for non-EU funds looking to lend into Europe is currently complex, with CRD 6 potentially adding greater complexity (particularly where lending is currently unregulated).



Article 21c will require that non-EU undertakings that carry out certain activities (including lending) in an EU member state establish and obtain a local branch authorisation. This will cut across existing national licensing regimes, with the potential to be most impactful where corporate lending is not regulated today.

For lending, Article 21c applies to any non-EU entity that (i) would qualify as a 'credit institution' under Article 4(1)(a) of the EU's Capital Requirements Regulation (the "**CRR**"), essentially by virtue of accepting deposits or other repayable deposits from the public, or (ii) that would fulfil the criteria in Article 4(1)(b) CRR, which determine whether the entity would be a 'Class 1 investment firm' if it were established in the EU. Essentially, its purpose is to capture non-EU banks and large investment firms that lend into the EU.

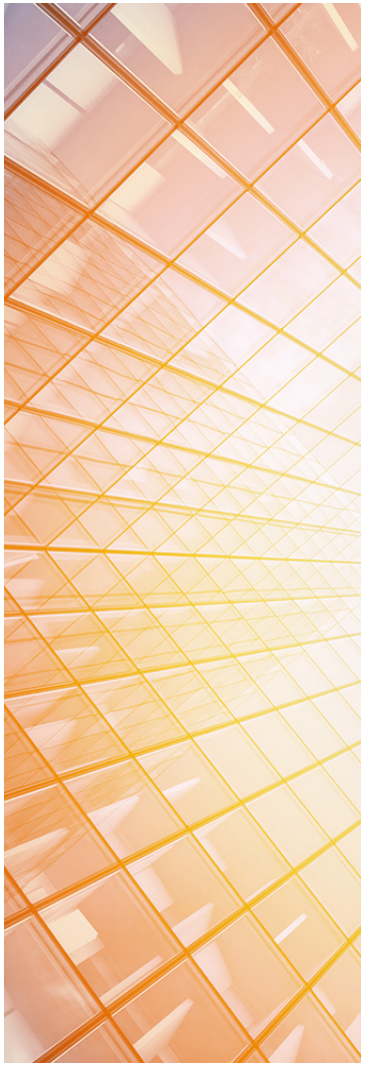
In principle, direct lending funds are unlikely to be captured. Generally they do not accept deposits, while collective investment undertakings (broadly speaking, funds) are carved out of the definition of a 'Class 1 investment firm'. However, there it is important to consider specific structures – particularly if loans will be advanced by non-EU vehicles that may not amount to collective investment undertakings. Even if a non-fund lending vehicle does not accept deposits, managers may need to consider the 'Class 1 investment firm' test more broadly. This can be a complex analysis which requires considering what other activities the vehicle carries on, before applying tests which look at the extent of the entity and the overall group's assets. Issues can also arise if the structure involves a non-EU bank lending alongside the fund.

In terms of implementation, CRD 6 is a directive. While approaches across the EU will hopefully be harmonised, this creates a risk that individual member states may 'gold-plate' or amend their existing licensing rules more broadly to capture lending activities conducted by non-EU entities generally. It will therefore be important to consider local implementations of CRD 6, and to check for impacts on new deals. Despite the implementation deadline fast approaching, however, several member states are yet to publish implementing legislation.

> **What about the UK?** CRD 6 will not apply in the UK and therefore will not change the position discussed above that corporate lending is unregulated.

Key dates

- **10 January 2026** – deadline for EU member states to have adopted and published laws implementing CRD 6
- **11 July 2026** – 'grandfathering' period for contracts entered into prior to this date (though firms will still need to consider lifecycle events on existing loans)
- **11 January 2027** – Art. 21c compliance deadline



What about AIFMD 2?

AIFMD 2 will amend the original Alternative Investment Fund Managers Directive to include, among other things, a new set of rules which apply to EU AIFMs managing AIFs that originate loans. In particular, the changes are intended to harmonise applicable rules, to improve risk management across the financial market and to increase investor transparency. It is due to go into effect from 16 April 2026.

AIFMD 2 introduces a new concept of "originating a loan" and applies new rules to EU AIFMs managing AIFs which carry out this activity, even if it is not the AIF's main activity. Those new rules include appropriate policies and procedures, a risk retention requirement, concentration limits and conflicts considerations. Further rules apply if the AIF is a "loan originating AIF", which broadly captures AIFs that originate loans as their main activity. Of particular relevance are new leverage limits.

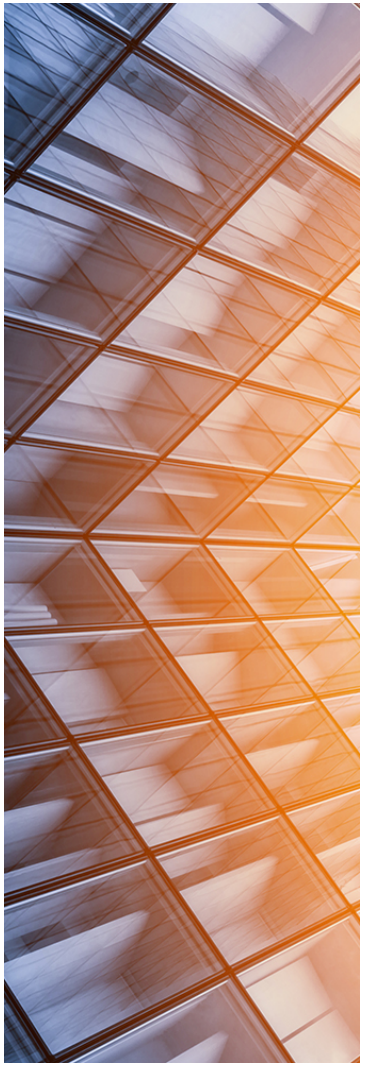
From a regulatory perspective, AIFMD 2 could result in a more integrated approach by allowing a loan originating AIF domiciled in one EU Member State to lend to companies in another EU Member State. That said, given AIFMD 2 is a Directive, the effectiveness of its harmonisation objective will depend in no small part on the extent to which individual Member States 'goldplate' the new loan origination rules locally.

The European authorities stopped short of introducing a holistic cross-border "passport" that would allow AIFMs to engage in loan origination across the EU without triggering local banking licence requirements, and therefore checking local implementing legislation to identify impacts on licensing analysis will be key.

Although the new rules are framed as applying to relevant EU AIFMs and therefore non-EU AIFMs are not directly caught, it is possible that Member States could still goldplate the rules to extend new loan origination conditions to non-EU AIFMs marketing their AIFs under national private placement regimes. We have not seen this so far in draft measures, however we continue to monitor local implementation.

> **What about the UK?** AIFMD 2 will not apply in the UK. The FCA is consulting on its own separate changes to the UK's post-Brexit AIFMD regime. For more information, see our note here. It is worth noting that, although there have been no public statements to this effect, we are not expecting the FCA to introduce a loan origination framework.

For more information about AIFMD 2, including its obligations concerning loan origination, please visit our AIFMD microsite



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Read our other resources on CRD6

CRD6: Options for responding to EU's cross-border restrictions

CRD6 to complicate cross-border banking services into the EU

CRD6 could shut out cross-border financial services into the EU

CRD6 proposes harmonised authorisation regime for third country branches

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